IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

First Appeal From Order No. 1340 of 2001
(Old No. 651 of 2000)

Oriental Insurance Company, Ltd.
Through its Assistant Administrative Officer
Divisional Office No. 1
16A M.S. Marg, Allahabad ..... Appellant

Vs

1. Md. Yaseen S/o Sri Nasruddin
2. Smt. Rukhsana W/o Sri Md. Yaseen
   both R/o Mauja Chakthaki
   Paragana Pacbhniatoon
   District Dehradun
3. Raj Kumar Sharma
   S/o Sri Raja Ram
4. Shashi Bhushan Sharma S/o Sri Raja Ram
   Respondents No. 3 and 4 are
   R/o 51 Ranchadhwala Pantidwadhi
   District Dehradun
   (Owner Truck No. UP7F 4955 ....Respondents

Hon'ble B.C. Kandpal, J.

The present appeal has been filed by the appellant – Oriental Insurance Company Ltd. under Section 173 of the Motor Vehicles Act, 1988 against the judgment and award dated 15.02.2000 passed by Ist Additional District Judge, Dehradun whereby the claim petition was allowed with the direction that the claimant is entitled for Rs. 1,00,000/- as compensation along with interest @ 6% per annum from the date of filing the claim petition.

2. Brief facts of the case are that on 28.10.1998, at about 03:00 p.m., the deceased – Fayaz Hasan who was coming from the shop of Suleman after purchasing some house hold items. Suddenly one truck bearing registration No. UP07F/4955 which was being driven in a very rash and negligent manner, hit the deceased from the backside

resulting which, he sustained injuries. The driver of the truck was run away from the place of occurrence. The injured – Fayaz Hasan immediately admitted to the Sahaspur hospital from where he was referred to Doon Hospital, Dehradun. On 29.10.1998, the injured – Fayaz Hasan has died due to grievous injuries. At the time of the accident, the age of the deceased was 8 years and according to the claimants, if their son could not have died in the accident, he would have earned lacs of rupees for them. The father of the deceased – Md. Yaseen filed a claim petition before the court concerned for compensation.

3. The Insurance company and the driver as well as owner of the offending vehicle contested the claim petition and filed their separate written statements. The driver of the offending vehicle has stated that compensation as has been claimed by the claimed is exorbitant. It has further been pleaded that the driver is not responsible for any compensation as he was not the owner of the offending vehicle.

4. The owner of the truck –Shashi Bhushan Sharma has also filed its written statement stating therein that it is not disputed that he is the owner of the offending vehicle. He has further stated that the offending vehicle was insured with the Oriental insurance Company Ltd., therefore, he was not responsible for the said accident and it is the responsibility of the Insurance Company for depositing the compensation.

5. The Oriental Insurance Company Ltd. has also filed its separate written statement. The Insurance Company denied the age of the deceased as 8 years at the time of the accident. It has been admitted by the Insurance Company

that at the time of the accident, the offending vehicle was insured with the company but on the other side it has been denied by the Insurance Company that the accident took place of the said truck.

6. On the basis if the pleadings of the parties, the court concerned framed following issued:-

1. Whether on 28.10.1998 the accident in question took place on account of the rash and negligent driving of truck No. UP07F/4955 by its driver? If so, its effect?
2. Whether the claimants were entitled to get any compensation? If yes, how much and from whom?

7. Both the parties were granted opportunity to produce the evidence in support of their case. The tribunal concerned after having heard the learned counsel for the parties and after perusing the entire material available on record awarded Rs. 1,00,000/- along with 6% interest as compensation vide judgment and award dated 15.02.2000.

8. Feeling aggrieved by the aforesaid judgment and award, the Insurance Company filed the appeal before this Court.

9. Heard learned counsel for the parties and perused the record.

10. In order to support its case, the claimants produced. the date-of-birth certificate of the deceased – Fayaz Hasan which clearly reveals that at the time of the accident the age of the deceased was 8 years.

11. The Hon'ble Apex Court in ***K. Murugesh & others Vs M. Palapaa & others*** reported in ***(1998) 8 Supreme Court Cases 418*** has observed that the victim in the prime of his youth and had a lot of expectations from life. The Hon'ble Apex Court further observed that merely on that date the deceased was not earning being a student, is not a relevant consideration for the purpose of determining the compensation payable to the claimant. The Hon'ble Apex Court in the aforesaid case enhanced the award of compensation to Rs. 1,00,000/- from Rs. 35,000/- along with 6% interest per annum from the date of filing the claim petition.

12. Having considered the argument advanced by the learned counsel for the appellant and after having perusing the material available on record a well as aforesaid decision of the Hon'ble Apex Court, I do not find any infirmity in the impugned judgment and award dated 15.02.2000 passed by the Tribunal concerned. I also do not find any ground to interfere in the impugned judgment and award passed by the tribunal concerned. The tribunal has rightly awarded the compensation in view of the Hon'ble Apex Court decision.

13. Therefore, the appeal lacks merit and is liable to be dismissed.

14. Accordingly, the appeal is dismissed. No order as to costs.

(B.C. Kandpal, J.)

12.10.2006
ASWAL